



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURNED RECEIPT REQUESTED

SEP 26 2006

Fieger, Fieger, Kenney & Johnson, PC
c/o Thomas W. Cranmer
Miller, Canfield, Paddock and Stone, P.L.C.
840 West Long Lake Road, #200
Troy, MI 48098

RE: MUR 5818
Fieger, Fieger, Kenney
& Johnson PC

Dear Mr. Cranmer:

On September 19, 2006, the Federal Election Commission found that there is reason to believe your client, Fieger, Fieger, Kenney & Johnson PC, knowingly and willfully violated 2 U.S.C. §§ 441b and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information provided in your letter to the Commission dated February 1, 2006 and on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in

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Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondent: Fieger, Fieger, Kenney & Johnson, P.C.

MUR: 5818

I. INTRODUCTION

Fieger, Fieger, Kenney & Johnson, P.C. ("the Firm") submitted a sua sponte submission on February 9, 2006 notifying the Commission that the FBI and Department of Justice ("DOJ") are investigating whether the Firm made contributions to John Edwards for President ("the Edwards committee") through conduits. The Firm suggests that "an objective investigation would exonerate the firm of any wrongdoing." Consequently, the Firm's counsel invited the Commission to conduct its own investigation of whether the Firm made conduit contributions. The Firm's counsel indicated, however, that should the Commission find probable cause, the Firm would be interested in pursuing conciliation so that it may be weighed as a mitigating factor, pursuant to 2 U.S.C. § 437g(d)(3), by a federal court in imposing a criminal sentence.

The letter is premised on the mistaken belief that DOJ cannot pursue charges against it (and others) until after the Commission conducts its own investigation. The Firm's counsel asserts that "[t]he conciliation process is a critical precursor to any criminal prosecution involving campaign contribution laws." Although the Act endows the Commission with exclusive civil jurisdiction, and provides mechanisms for the Commission to refer or report matters to the DOJ, it nowhere makes the DOJ's exclusive jurisdiction over criminal enforcement of the Act dependent on prior action by the Commission. Moreover, while a defendant's compliance with a conciliation agreement between the defendant and the Commission shall be taken into account by a court in criminal proceedings and sentencing, *see*

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2 U.S.C. § 437g(d)(2) and (3), the U.S. Sentencing Guidelines explicitly state that such a factor is not taken into account where “the defendant began negotiations toward a conciliation agreement after becoming aware of a criminal investigation,” as would be the case here. U.S. SENTENCING GUIDELINES MANUAL § 5E1.2 (2005).

As explained below, publicly available information indicates that there is a factual basis for the Commission to accept the Firm’s invitation to investigate this matter. Accordingly, the Commission finds reason to believe that the Firm knowingly and willfully violated the Act in connection with contributions made to the Edwards committee.

II. FACTUAL AND LEGAL ANALYSIS

Fieger, Fieger, Kenney & Johnson, P.C. is a professional corporation, with Geoffrey N. Fieger listed as President, and both Vernon R. Johnson and Jeremiah J. Kenney listed as Vice Presidents. Commission records reflect that all 16 of the attorneys currently employed by the Firm, or employed by the Firm at the time of their contribution, as well as 30 other individuals who appear to be former Firm attorneys, current non-lawyer employees, and family members of current or former Firm attorneys and non-lawyer employees contributed to the Edwards committee in 2003.¹ See Charts of Fieger Law Firm and Related Contributions (Attachment 1). Of these 46 contributors, 36 contributed the individual maximum amount of \$2,000 on one of three days, March 30, 31 or June 30, 2003. Further, 34 of these 46 contributors have no previous record of contributing to any Federal campaign. Thus, it appears that individuals associated with the Firm made \$93,500 in contributions to the Edwards committee in 2003.

¹ The potential amount in violation includes a \$2,000 contribution from Jeremiah Joseph Kenney, a named partner of the Firm. We are making no recommendation regarding Mr. Kenney, who passed away in April 2005, but we are including the amount of his contribution in the total amount that might have been reimbursed.

According to news accounts, the Federal criminal investigation stems from allegations made by Joseph Bird, a former attorney at the firm. Sarah Karush, *Lawyer Says Fieger Partner Told Him to Contribute to Edwards Campaign*, DETROIT NEWS, Dec. 3, 2005. Approximately two weeks after Mr. Bird joined the Firm in 2003, Vernon Johnson, a named partner and vice president of the Firm, allegedly told Mr. Bird that "he was expected to give to the Edwards campaign." *Id.* Bird claims that he brought in two \$2,000 checks, one from him and one from his wife, the next day, and that he received a reimbursement check for \$4,000 two days later. *Id.* The same news report states that Johnson denies the incident with Bird, and named partner, Geoffrey Fieger, claims Bird is a disgruntled former employee seeking revenge against the Firm. *Id.* Another news report, however, quoted Mr. Fieger as asserting that he gave bonuses to so-called "civic-minded employees" (without explaining the meaning of that term) and that he expected a grand jury indictment based on those bonuses. Joe Swickard, *Fieger: I Expect To Be Indicted*, DETROIT FREE PRESS, Jan. 17, 2006.

The Firm's submission does not confirm, deny or make any substantive representation as to the allegations attributed to Mr. Bird in press reports.

If the Firm reimbursed contributions to the Edwards committee, then the Firm may have violated the Act. The Act prohibits any person from making or accepting a contribution in the name of another person. Likewise, persons are prohibited from knowingly permitting their names to be used to effect contributions made in the name of another person and from knowingly assisting in making such contributions. 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(iii). The Act also prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any Federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a).

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The circumstances of this matter establish a basis for the Commission's reason to believe finding. First, a former Firm attorney reportedly made specific allegations to Federal authorities that the Firm reimbursed campaign contributions to the Edwards committee from him and his wife. Second, although members of the Firm denied Mr. Bird's allegations in statements to the press, such denials are not repeated or adopted in the Firm's submission. Third, Mr. Fieger reportedly said in reference to the allegations that he gave "bonuses" to "civic-minded employees." Fourth, the Commission's records show a large number of maximum contributions made on the same days by individuals associated with the Firm, many of whom had never previously contributed to any Federal campaign.² Fifth, the Firm's letter acknowledges that the Commission may conclude there is probable cause to believe that it committed violations of the Act. Finally, there is an ongoing criminal investigation regarding these allegations.

Due to the inherently deceptive nature of conduit schemes, the Firm may have committed knowing and willful violations of the Act. *See* 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *See Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-15. Accordingly, the Firm may have committed knowing and willful violations of the Act by devising and carrying out an illegal and inherently deceptive reimbursement scheme which

² While the making of multiple contributions on the same day is not a sufficient basis in and of itself to establish reason to believe, it is relevant evidence that must be considered in connection with other circumstances, such as those present in this matter.

included reimbursing employees and their family members in the form of "bonuses" for their campaign contributions.

Based on all of the above, the Commission finds reason to believe that Fieger, Fieger, Kenney & Johnson, P.C. knowingly and willfully violated 2 U.S.C. § 441f. Because the firm is an incorporated entity, the Commission also finds reason to believe that Fieger, Fieger, Kenney, & Johnson, PC knowingly and willfully violated section 441b(a) of the Act, by making prohibited corporate contributions.

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